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ADOPTION OF THE REPORT OF THE COMMISSION ON ITS SEVENTEENTH SESSION

Draft report

Addendum

Rapporteur: Andrew G. BANGALI (Sierra Leone)

Chapter ___

WORK RELATED TO THE CODE OF CONDUCT ON TRANSNATIONAL CORPORATIONS AND OTHER INTERNATIONAL ARRANGEMENTS AND AGREEMENTS

1. The Commission considered item 7 of its agenda at its 9th meeting, on 16 April 1991. It had before it the following documents:

(a) Report of the Secretary-General on progress made in the work on the code of conduct on transnational corporations (E/C.10/1991/8 and Corr.1);

(b) Report of the Secretary-General on other international, regional and bilateral arrangements and agreements related to transnational corporations (E/C.10/1991/9).

A. Code of conduct on transnational corporations

2. The Executive Director of the United Nations Centre on Transnational Corporations gave a brief account of the progress made towards the formulation of the code of conduct since the sixteenth session of the Commission. He pointed out that, in an effort to facilitate consensus on the outstanding issues in the code, the Chairman of the special session had put together a text of the draft code, which reflected the views and proposals presented by delegations during consultations. The text, contained in document E/1990/94, had been submitted to the General Assembly at its forty-fifth session, through the Economic and Social Council, for appropriate action. The Assembly was of the view that the code needed to be discussed further before it could be adopted by consensus. The Assembly therefore designated the President of the forty-fifth session, with the support of the Secretary-General, to hold another round of consultations aimed at finalizing the draft code, and to submit the draft to the Assembly at its forty-sixth session for adoption. In that respect, the Executive Director drew the attention of delegations to a note prepared by the President of the General Assembly, which contained a number of suggestions on how to approach the next round of consultations.

3. In reviewing the negotiating process over the years, the Executive Director said that the positive results achieved so far in the negotiations had outweighed the difficulties encountered. Those difficulties had to be placed in the proper perspective having regard to all the constraints under which the negotiations had been conducted. Among them were the growth rate of foreign direct investment, both in absolute and in relative terms, and the fundamental changes in the investment climate in most developing countries, as well as in Central and Eastern European countries, which had opened new vistas for the further expansion of foreign direct investment. All those developments had reinforced the case for a multilateral instrument on foreign direct investment.

4. The Executive Director stated that the code of conduct represented a major international endeavour to establish a balanced, comprehensive and multilateral framework that spelt out the ground rules for relations between Governments and transnational corporations. The code constituted the only effort of its kind and was indeed long overdue. The Executive Director concluded that while the global economic context for the negotiations on the code had certainly changed considerably during the course of the negotiations, those changes had also been reflected in the code, which had been modified to reflect recent State practices. Despite all those developments, relations between transnational corporations and Governments were still subject to a degree of uncertainty and unpredictability. Therefore a common framework of standards of behaviour for investors, as well as for their treatment by Governments, was needed as much at the present time as it had been 15 years before.

5. Delegations that spoke on the item expessed support for the completion of the code and welcomed the new opportunity provided by the General Assembly in its resolution 45/186 to hold a further round of intensive consultations aimed

at achieving that end. The resolution reflected the interest of Governments in pursuing the negotiations. Delegations also expressed the view that the code could only be finalized if there were sufficient political will.

6. Some delegations noted that while there had been considerable improvement in the investment climate in most developing and other countries, there were still potential sources of conflict in relations between investor and host country. Those problems could be resolved only by establishing international standards in the area of foreign direct investment that took into account the legitimate concerns of all parties to an investment relationship.

7. One delegation said that the text of the General Assembly resolution provided all the elements for the continuation of the negotiations on the draft code. While there were still difficulties to be overcome, progress was possible, if the negotiations were approached in a constructive spirit. With respect to the effectiveness of the code, the delegation noted that once adopted, the code would take on a life of its own. Indeed, some provisions could become part of international law, while others might need further development. That would be determined in the follow-up process.

8. Another delegation stressed that international standards were needed to enhance the contribution of transnational corporations to the development of host countries. The dramatic changes that had occurred in investment relations in recent years did not obviate the need for the code and could only facilitate agreement on some of the outstanding issues. The same delegation observed that the note by the President of the General Assembly contained some promising proposals for resolving outstanding issues. It acknowledged the efforts made by the Chairman of the special session of the Commission to put together a compromise text.

9. One delegation expressed the view that the tone and approach of the draft code belonged to an era when many host Governments mistrusted transnational corporations and sought to limit foreign investment flows. However, the delegation said it was prepared to support a balanced, voluntary draft code that could be adopted by consensus.

10. The representative of the World Federation of Trade Unions expressed concern that the code had not yet been adopted. Transnational corporations continued to dominate the world economy, while many developing countries were experiencing a recession. The positive contribution of transnational corporations to development was still to be seen, and there were doubts that those corporations would voluntarily try to correct imbalances. However, many Governments of the home countries of transnational corporations did not seem to recognize those facts.

11. The representative of the International Confederation of Free Trade Unions stressed the important role non-governmental organizations could play in the implementation procedure of the code. Without an adequate procedure, the adoption of the code would have no sense. He confirmed the conclusions reached at a recent conference that, in the experience of trade unions,

transnational corporations did not observe the kind of international standards proposed in the code. The conclusions of that conference emphasized the need to adopt the code. The code should be universal, balanced and voluntary. The latest draft met all those requirements and therefore it should be adopted. He stressed the importance of the provisions on disclosure of information in the code.

12. The representative of the International Labour Organisation (ILO) referred to the linkage between the code and the ILO Declaration. He stressed that the ILO instrument involved the active participation not only of Governments, but also of trade unions and business organizations.

13. One expert adviser expressed concern that after many years of trying to improve investment relations, many people still did not understand what the code was trying to achieve. In his view, it was important to bear in mind that the code was to be voluntary, universal and balanced. Other aspects were not so important and could be improved with time. To be effective, the code should be acceptable to the business community. It was therefore important to pay attention to the views of transnational corporations in the negotiations on the code.

14. In his concluding remarks, the Executive Director of the Centre said that delegations had spoken in favour of continuing the discussions on the code. In his view, the proposals made by the President of the General Assembly reflected the spirit of the code. He stressed that the adoption of the code remained a priority and hoped that progress could be made.

Action taken by the Commission

15. The Commission took note of the report of the Secretary-General on progress made in the work on the code of conduct on transnational corporations (E/C.10/1991/8 and Corr.1).

B. Other international, regional and bilateral arrangements and agreements related to transnational corporations

16. The Executive Director of the Centre introduced the report of the Secretary-General on other international, regional and bilateral arrangements and agreements related to transnational corporations. He said that the report focused on bilateral treaties for the promotion and protection of foreign investments and that it highlighted the main findings of the technical study on which it had been based. The number of bilateral investment treaties had been increasing in recent years and further countries, notably countries in Latin America and Central and Eastern Europe had joined in the practice. Such developments had come about in response to the growing importance given to attracting investment flows in those regions and to the absence of a multilateral regime governing those flows. He noted that the more recent treaties showed a marked similarity. Earlier treaties could be improved,

particularly by providing concrete measures for the promotion of investment flows to the capital-importing country partner.

17. One delegation noted that the approach to bilateral investment treaties taken in the report did not go far enough in the consideration of role of the market forces in determining investment flows.

18. The representative of the International Organisation of Employers said that bilateral investment treaties were important for creating a stable investment climate. Without the guarantees provided in those treaties, investors would not even consider investing in many countries. He could not agree with the suggestion that the code would be a substitute for those treaties. In his view, bilateral investment treaties would be needed even if the code was adopted. He rejected the suggestion that bilateral investment treaties could incorporate some of the standards of behaviour proposed in the code because, among other reasons, those standards were voluntary, whereas bilateral treaties were legally binding.

Action taken by the Commission

19. The Commission took note of the report of the Secretary-General on other international, regional and bilateral arrangements and agreements related to transnational corporations (E/C.10/1991/9) and requested the Centre to continue its work on that area, taking into account the views expressed by the Commission.